DBA SECURITIES SECTION · WEBINAR · JUNE 22, 2026 · 1.0 HOURS (0.5 ETHICS)

The New Disclosure Landscape

Tariffs, Foreign Capital, CFIUS & Private Offerings

PRESENTER

Jason T. Barnes

Shareholder
MUNSCH HARDT KOPF & HARR, P.C.

PROGRAM OVERVIEW

Program Roadmap

01 **The Disclosure Baseline**
Reg D exemptions, Regulation S, anti-fraud, and the Texas blue-sky overlay that sets the floor.

02 **Tariffs & Trade Policy**
Running a materiality analysis on supply-chain exposure and drafting risk factors that survive scrutiny.

03 **Foreign Capital & EB-5**
Source-of-funds diligence, OFAC screening, and the non-U.S. investor compliance picture.

04 **CFIUS & State Law**
National-security review, mandatory triggers, and Texas SB 17's foreign-ownership restrictions.

05 **Materiality & Drafting**
Basic v. Levinson applied, risk-factor specificity, and the disclosure record.

06 **Ethics & Takeaways**
Counseling duties when management wants a material risk softened - plus the close.

SECTION 01

The Disclosure Baseline

01

Where the duty comes from before geopolitics enters. The exemption controls how you sell; the anti-fraud rule controls what you must tell - and that is where geopolitical risk lives.

1.1 The Exemption Framework & the Anti-Fraud Engine

1

The Reg D Menu

- Section 5 requires registration unless an exemption applies; private deals rely on Section 4(a)(2)
- Rule 506(b): no general solicitation; unlimited accredited plus up to 35 sophisticated investors. NAIs must meet sophistication requirement, either alone or with a purchaser representative, and Rule 502(b) information-delivery requirements apply.
- Rule 506(c): permits general solicitation if the issuer takes reasonable steps to verify status

2

Regulation S - Tool & Trap

- Covers offers and sales made outside the U.S. with no U.S.-directed selling efforts
- Tempting when capital is foreign - but it does not switch off anti-fraud duties
- Frequently misapplied with domestic issues. Available to domestic and foreign issuers, but only for qualifying offshore transactions with no directed selling efforts in the United States and compliance with applicable distribution and resale restrictions

3

Rule 10b-5 Is the Real Engine

- Unlawful to misstate or omit a material fact in connection with any securities transaction
- Accredited-only does not mean disclosure-free: what you do say must be complete and not misleading
- A thin PPM in a tariff-exposed or foreign-capital deal is where rescission risk is born

1.2 The PPM and the Texas Blue-Sky Overlay

1

Do We Even Need a PPM?

- Rarely required by law for accredited-only deals - almost always advisable
- In a Rule 506(b) offering with any NAIs, Rule 502(b) requires specified written information, including non-financial information generally comparable to registration-statement or Regulation A disclosure, and specified financial-statement information
- Rule 506(c) does not permit non-accredited purchasers
- Broker-dealers and institutions will demand a PPM regardless of the legal floor
- The PPM is your primary risk-management instrument - and where the geopolitical disclosures will physically live

2

Texas & State-Law Reality

- 506(b)/(c) preempt state registration, but states keep anti-fraud authority and notice-filing and fee requirements
- Texas requires its own notice filing where applicable; the State Securities Board retains enforcement reach
- The practical remedy risk includes rescission or rescissionary damages under state blue-sky and other claims, SEC enforcement, and private securities-fraud damages where material misstatements or omissions are made
- Form D within 15 days; five-year recordkeeping; informal and off-channel messages can join the disclosure record

SECTION 02

Tariffs & Trade Policy

02

Tariffs are no longer a macro talking point - they are a line item that can move margin and valuation in a single quarter. The skill is not predicting policy; it is disclosing exposure and uncertainty honestly.

2.1 Where Tariff Risk Bites - and How to Test It

1

Where the Exposure Lives

- Input-cost exposure: imported components, materials, or finished goods that carry - or may carry - new duties
- Supply-chain concentration: dependence on a single country or supplier is itself the risk
- Customer and demand effects from retaliatory tariffs and downstream price increases
- Contract rigidity: whether the issuer can pass cost increases through or is locked into fixed-price commitments

2

A Repeatable Materiality Test

- Quantify the exposure: what share of COGS, revenue, or a key product line touches the affected supply chain?
- Estimate the swing: plausible range of margin or earnings impact under reasonable scenarios
- Assess substitutability: can inputs be re-sourced, and at what cost and delay?
- Map it to the thesis: would a reasonable investor's view of the total mix of information change?

2.2 Drafting Risk Factors That Survive Scrutiny

1

Drafting Principles

- Be specific: name the inputs, the geography, and the dependency
- Disclose the uncertainty itself as the risk - do not manufacture a false prediction
- Do not promise mitigation you have not executed; you now own that statement
- For public-company or registered-offering disclosure, consider Regulation S-K Items 105 and 303, including known trends, uncertainties, and material risk factors; for private placements, the same facts may be material under Rule 10b-5, Securities Act § 17(a), state anti-fraud law, and PPM disclosure practice.

AVOID - BOILERPLATE

“Changes in tariffs and trade policy could adversely affect our business.”

BETTER - SPECIFIC

“Approximately [X]% of our cost of goods sold derives from components sourced from [country]. New or increased duties - which have ranged from [low] to [high] over [period] - could materially increase costs we may be unable to pass through under fixed-price contracts running to [date].”

SECTION 03

Foreign Capital & EB-5

03

Foreign capital is welcome capital - until it is not screened. When money crosses a border into your offering, you inherit obligations around who the investor is, where the funds came from, and whether the law lets that person hold this interest at all.

3.1 Know-Your-Investor as a Disclosure Duty

1

Source-of-Funds

- Confirm invested capital was lawfully obtained
- An AML safeguard - and, in EB-5, a program requirement
- Build a file that survives a regulator or a plaintiff's subpoena

2

OFAC & Sanctions

- Screen investors and their beneficial owners against sanctions lists
- A sanctioned investor is not a disclosure problem - it is a transaction you cannot complete
- Iran and North Korea principals are already barred by federal sanctions

3

Beneficial Ownership

- The investor of record may not be the controlling party
- Trace ownership and control, not just the signature block
- A heavily foreign cap table can itself be material - it drives CFIUS and state-law exposure

3.2 EB-5: Foreign-Capital Compliance in One Structure

At bottom, a securities offering with an immigration benefit - it shows every foreign-capital pressure in one place.

1

Same Reg D Analysis

- Typically a Rule 506(b) or 506(c) private placement - the analysis is the same as any Reg D deal
- Regulation S is frequently invoked for the offshore piece - and frequently misapplied
- 100% non-U.S. investor base is exactly where verification protocols are weakest

2

Program-Specific Pressure

- U.S.-based solicitation requires a FINRA-registered broker-dealer; unregistered activity draws SEC, FINRA, and USCIS attention
- ERIA added integrity-fund fees, background checks, and registration of agents and promoters
- Conflicts compound when sponsor, developer, and Regional Center are affiliated - separate deal risk from immigration risk

SECTION 04

CFIUS & State Law

04

The same foreign investor can be fine for your cap table, barred from your Texas real estate, and a trigger for federal review. Same investor, three legal regimes - and they run independently of one another.

4.1 CFIUS: Jurisdiction, Filings & Deal Impact

1

What CFIUS Reaches

- Operates under Section 721 of the DPA, modernized by FIRRMA (2018)
- Reaches certain foreign investments in U.S. businesses and U.S. real estate
- Includes some non-controlling investments in TID businesses - critical Technology, Infrastructure, and Data

2

Filings & Penalties

- Most filings are voluntary notices for safe-harbor clearance - but non-notified deals can be reviewed any time, even post-closing
- Mandatory in defined cases (e.g., substantial foreign-government interest in a TID business; certain critical-tech deals)
- Penalties for non-filing or breach now exceed $5M per violation

3

Posture & Practice

- 2025 America First Investment Policy fast-tracks allies, tightens scrutiny of adversaries
- Treasury piloting a Known Investor Program - does not change jurisdiction
- Watch investor rights: board seats and vetoes can convert a passive stake into a covered one

4.2 Texas SB 17 and How It Meets CFIUS

1

The State Foreign-Ownership Statute

- Effective Sept. 1, 2025 (Property Code Subchapter H): bars parties tied to designated countries - China, Russia, Iran, North Korea - from acquiring Texas real property
- “Real property” and “interest” read broadly: residential, commercial, industrial, agricultural; leases of a year or longer; mineral and water rights
- March 2026 proposed AG rules widen the indirect-ownership net - potentially a U.S. acquirer 10%+ indirectly Chinese-owned - and scope in successive short leases
- Penalties: greater of $250K or 50% of market value; possible state-jail felony; court-ordered divestiture

2

Two Independent Regimes

- A deal cleared by CFIUS can still violate SB 17 - and vice versa. Coordinate both analyses
- SB 17 reaches all Texas real property; CFIUS reaches deals with a national-security nexus
- An issuer that merely leases Texas space can be inside SB 17 without ever touching CFIUS
- Genuinely unsettled: SB 17 faces a constitutional challenge (S.D. Tex.); no court has yet reached the merits - disclose the regime and the uncertainty, do not predict the outcome

SECTION 05

Materiality & Drafting

05

Everything runs through one legal test and one drafting discipline. The test is materiality. The discipline is specificity. Get those two right and the geopolitical content takes care of itself.

5.1 Materiality, Specificity & the Disclosure Record

1

Basic v. Levinson, Applied

- Material if a reasonable investor would consider it important to the total mix of information
- For contingent events - a possible tariff, a pending statute, a potential CFIUS review - weigh probability against magnitude
- A low-probability, deal-ending event can still be material

2

Risk Factors: Specificity

- Generic risk factors fail twice - they do not inform investors and do not protect the issuer
- Tie each one to this issuer: this supply chain, this cap table, this asset, this jurisdiction
- Rarely a duty to update a placement, but your own statements or conduct can create one

3

The Disclosure Record

- Investor Q&A, side letters, and emails all become part of the record
- A carve-out granted to one investor can create a disclosure issue for the rest
- Three diligence lenses - issuer, offering, and investor - the last now includes sanctions and foreign-control screening

SECTION 06 · ETHICS CREDIT

Ethics & Takeaways

06

The hardest version of today's problem: you have identified a material geopolitical risk, and management wants it softened, buried in boilerplate, or left out. Zealous representation and candor now point in different directions - the rules give us a path.

6.1 Disclosure Counseling Under the Model Rules

1

The Governing Rules

- **Rule 1.2 – Scope**: The client sets objectives, but you may not assist conduct you know is fraudulent
- **Rule 1.4 – Communication**: Explain the disclosure risk well enough for an informed decision, including rescission consequences
- **Rule 2.1 – Candid Advice**: Independent judgment, not the answer management wants to hear
- **Rule 4.1 – Truthfulness**: No false statement of material fact to a third party; no knowing assistance of fraud through silence

2

A Practical Escalation Path

- **Document the advice**: Memorialize the risk you identified and the disclosure you recommended
- **Explain the consequence**: Walk management through rescission, enforcement, and personal exposure
- **Escalate within the entity**: Your client is the entity, not the officer; take it up the chain, to the board if needed
- **Reassess the engagement**: Withdrawal under Rule 1.16 where continued work would make you part of a fraud (1.6 governs a noisy exit)

KEY TAKEAWAYS

Three Things to Take Away

1 Disclosure is now a national-security and trade-policy exercise, not just a financial one. The universe of what is material has expanded - tariffs, foreign capital, and CFIUS are core inputs, not afterthoughts.

2 The same foreign investor can be fine for your cap table, barred from your Texas real estate under SB 17, and a trigger for federal CFIUS review. Screen the cap table as a compliance document and coordinate federal and state analyses.

3 Assess materiality as probability times magnitude, draft every geopolitical risk factor to this issuer, keep the disclosure record clean, and document your advice - it is your best protection if management overrules you.

Questions & Discussion

Jason T. Barnes · jtbarnes@munsch.com · 214.880.1024